IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 185/2006

M/s. Wibro Construction Co.,
Through its Proprietor, Mr. K. Abdulla,
of major age, son of V. Mamu,
Indian National, Having its office at
Cardoso Building, Near K.T.C. Stand,
Patto, Panaji, Goa. ..... Applicant

V e r s u s

1. M/s. Finex Agency,
   Through its Proprietor,
   Mr. Vallabhabhai G. Patel,
   of major age, Indian National,
   Having his office at above Meghdut Hotel,
   Opp. Vrindavan Hotel,
   Vasco da Gama, Goa.

2. State
   (Through PP) ..... Respondents

Shri Arun Bras De Sa, Advocate for the Applicant.

CORAM: **N. A. BRITTO, J.**

DATE: **27th April, 2006**

ORAL ORDER

Heard Shri Arun Bras De Sa on behalf of the Applicant who is the Complainant in Criminal Case No.689/OA/2001/B/D and whose complaint has been dismissed by the learned JMFC, Panaji by order dated 10/02/2006 and the accused has been acquitted under Section 138 of the Negotiable Instruments Act, 1881.

2. The case of the Complainant was that the accused had taken certain sum of money from the Complainant and towards repayment of the same the accused had issued a cheque of Rs. 3,00,000/- which when presented by the Complainant to the Bank was dishonoured on 1/08/2001. After giving the statutory notice the Complainant filed the said complaint prosecuting the accused for the offence, aforesaid. In the course of evidence given by the Complainant as well as the accused it came to light that the Complainant had given to the accused a sum of Rs. 2,00,000/- on 11/07/1995 and another sum of Rs. 5,00,000/- on 22/07/1995 but the cheque which the accused gave towards repayment of the said liability, after the accused had paid some of the amount, was dated 30/07/2001. There is no evidence on record as to when the

accused had paid part of the said amount namely Rs. 4,00,000/-. The learned JMFC by relying on the explanation below Section 138 of the Act has come to the conclusion that the said cheque dated 30/07/2001 issued by the accused to the complainant was not towards a legal enforceable debt. In my view the above conclusion cannot be faulted.

3. This Court in the case of ***Mr. Narendra V. Kanekar Versus The Bardez Taluka Co-op. Housing Mortgage Society Ltd. & Anr.***(Cr. R.A. No.3 of 2006) by judgment dated 20/04/2006 has held as follows:

> 'There appears to be preponderance of judicial opinion in support of the view that only if the cheque is issued in discharge of a legally enforceable debt or other liability that Section 138 of the Act is attracted but if a cheque is issued for the discharge of a time barred debt and it is dishonoured, the accused cannot be convicted under Section 138 of the Act. This view was first taken in ***Girdhari Lal Rathi Versus P.T.V. Ramanujachari (1997 (2) Crimes 658),*** then by this Court in the case of ***Smt. Ashwini Satish Bhat Versus Shrijeevan Divakar Lolienkar (1999 (1) G.L.T. 408)*** and ***Joseph Versus Devassia (2003 K.L.T. (3) 533)*** and it appears that the last Judgment also has the imprimatur of the Apex Court in Special Leave to Appeal (Cri) No.1785/2001, which was dismissed by Order dated 10.09.2001 and, therefore, needs to be followed by this Court.'

4. In the case at hand, the cheque was given by the accused after the debt had become time barred. In view of the above this is not a fit case to grant special leave to appeal. Hence the application is hereby rejected.

N.A. BRITTO, J.

NH